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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1963

No. 951

CARPENTERS LOCAL UNION NO. 345 OF THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, and H. A. KELLUM, PRESIDENT, OTTO SCHLAFER, BUSINESS AGENT,
Petitioners,

vs.

HOWARD RUBIN, d/b/a, HOWARD RUBIN AND COMPANY,
Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE CHANCERY COURT OF SHELBY COUNTY, TENNESSEE

ANTHONY J. SABELLA
1401 Columbian Mutual Tower
Memphis, Tennessee 38103
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Petitioners,

vs.

HOWARD RUBIN, d/b/a, HOWARD RUBIN AND COMPANY,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE CHANCERY COURT OF SHELBY COUNTY, TENNESSEE

Carpenters Local Union No. 345 of the United Brotherhood of Carpenters and Joiners of America, H. A. Kellum, President and Otto Schlafer, Business Agent, pray that a Writ of Certiorari issue to review the judgment and order of the Chancery Court of Shelby County, Tennessee. The Supreme Court of Tennessee has denied the petitioners' petition for a Writ of Certiorari to review the order and judgment of the Chancery Court of Shelby County, Tennessee.

OPINIONS BELOW

The Supreme Court of Tennessee rendered no opinion in its denial of the Writ but noted on the petition "Petition denied: White, J., March 12, 1964" (App. B, A5).

The Chancery Court of Shelby County did not render an opinion but in its decree found that picketing violated Tennessee Right-To-Work Law and it had jurisdiction over this matter (R. 14).

JURISDICTION

The decree of the Chancery Court of Shelby County, Tennessee, was entered on February 10, 1964. The Supreme Court of Tennessee denied the Writ on March 12, 1964. The jurisdiction of this Court is involved under 28 U.S.C. 1257 (3).

QUESTIONS PRESENTED

1. May a state court assume jurisdiction of peaceful picketing under its "Right-To-Work" statute (Tennessee Code Annotated 50-209) where the picketing is an arguable violation of the National Labor Relations Act, as amended (29 U.S.C. 151 *et seq.*) or protected concerted activity under that statute.

STATUTES INVOLVED

The pertinent provisions of the National Labor Relations Act, as amended, 29 U.S.C., Section 151 *et seq.*, are set forth in Appendix A.

STATEMENT OF THE CASE

Petitioner labor organization is a labor organization engaged in collective bargaining with building contractors in and around Memphis, Shelby County, Tennessee. The individual petitioners are the main executive officers of the labor organization. Respondent is a building contractor engaged in the construction of a 96 unit apartment project (R. 1).

On January 30, 1964, the respondent filed his original bill for injunctive relief against petitioners seeking an injunction to restrain petitioners and any members, agents, servants or employees from further picketing of any kind (R. 3).

The bill specifically alleged that the picket signs read "Members of the Carpenters Local #345 are not employed by Howard Rubin & Company on this job; that the purpose of said signs and said pickets are to cause the complainant to discharge all its non-union labor and to force your complainant to hire in their stead only union labor" (R. 2). It further alleged that the picketing was "to cause and bring about a union shop. . . : in violation of Section 50-209, Tennessee Code Annotated . . ." (R. 3).

On February 3, 1964, petitioners filed a sworn answer and plea in abatement in which it was averred that the construction project directly affected interstate commerce and therefore was within the exclusive jurisdiction of the National Labor Relations Board (R. 6). Petitioners denied that the object of the picketing was to cause respondents to discharge its non-union employees, averred that it was for the purpose of advising the public that respondent did not employ members of the petitioner labor organization (R. 7).

Petitioners averred that the Chancery Court did not have jurisdiction of the subject matter of the bill because the picketing complained of constituted either unfair labor practices or protected concerted activities affecting interstate commerce over which the National Labor Relations Board had exclusive jurisdiction. Petitioners therefore prayed for dismissal of the bill because of the lack of jurisdiction (R. 7, 8).

The Chancery Court, as is its customary procedure, considered the matter on bill and answer, assumed jurisdiction on the basis of the Tennessee Right-To-Work Law and issued its injunction restraining all picketing (R. 14).

On February 24, 1964, petitioners sought review of the Chancery Court order and judgment because it exceeded its jurisdiction, as it had a right to under Tennessee Code Annotated 27-801 (App. A, A2). On March 12, 1964, by notation on the petition for Writ of Certiorari, the writ was denied (App. B, A5).

Thus there is a final order asserting jurisdiction over a subject matter which is beyond the power of the state court and instead is within the exclusive jurisdiction of the National Labor Relations Board.

REASONS FOR GRANTING THE WRIT

A. The foregoing facts readily reveal that the decision of the Court below is in direct conflict with the decisions of this Court in *San Diego Building Trades* v. *Garmon*, 359 U.S. 236; *IBEW* v. *Farnsworth and Chambers*, 353 U.S. 969; *Local No. 438, Construction and General Laborers Union* v. *Curry*, 371 U.S. 542; *Liner* v. *Jafco, Inc.*, ... U.S. ....., 84 S. Ct. 391, 48 L.c. Par. 50,985 (decided January 6, 1964). The Tennessee Court, in constituting itself a

forum for deciding facts and effectuating a remedy arising out of acts and conduct which were "arguable" either unfair labor practices or protected concerted activity, has asserted jurisdiction in an area which is within the exclusive province of the National Labor Relations Board. The attitude of the Tennessee Court towards this labor controversy and the procedure used to implement such controversy has produced incompatible and conflicting and adjudication at variance with the clear intent of the National Labor Relations Act, as amended, cf. *San Diego Building Trades* v. *Garmon, supra.*

B. The only basis asserted below for assumption of jurisdiction is that the picketing is, or may also be a violation of the Tennessee Right-To-Work Law. This Court has considered and rejected this precise contention in *IBEW* v. *Farnsworth and Chambers* and *Local 438, Construction and General Laborers Union* v. *Curry, supra.*

C. The temporary injunction herein is as final on the issue of jurisdiction as any final order can be and is reviewable as any final order. If permitted to stand it would erode the national labor policy requiring the subject matter to be heard by the National Labor Relations Board. *Local 438, Construction and General Laborers' Union* v. *Curry* and *Liner* v. *Jafco, Inc., supra.*

CONCLUSION

For the reasons set forth, it is respectfully submitted that this petition for Writ of Certiorari should be granted.

Respectfully submitted,

ANTHONY J. SABELLA
1401 Columbian Mutual Tower
Memphis, Tennessee 38103
Attorney for Petitioners

APPENDIX

APPENDIX A

Statutes Involved

National Labor Relations Act, as amended, 29 U.S.C., Section 151 *et seq*

Rights of Employees

"Section 157. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in Section 158 (a) (3) of this title.

Unfair Labor Practices

"Section 158 (b) (2). To cause or attempt to cause an employer to discriminate against an employee in violation of subsection (a) (3) of this section or to discriminate against an employee with respect to whom membership in such organization has been denied or terminated on some ground other than his failure to tender the periodic dues and the initiation fee uniformly required as a condition of acquiring or retaining membership.

Section 158 (b) (7) (c) . . . *Provided further*, that nothing in this subparagraph (C) shall be construed to prohibit any picketing or other publicity for the purpose of truthfully advising the public (including consumers)

that an employee does not employ members of, or have a contract with a labor organization, unless an effect of such picketing is to induce any individual employed by any other person in the course of his employment, not to pick up, deliver or transport any goods or not to perform any services.

Tennessee Code Annotated 50-209.

It shall be unlawful for any person, firm, corporation or association of any kind to enter into any contract, combination or agreement, written or oral, providing for exclusion from employment of any person because of membership in, affiliation with, resignation from, or refusal to join or affiliate with any labor union or employee organization of any kind.

Tennessee Code Annotated 27-801.

The writ of certiorari may be granted whenever authorized by law, and also in all cases where an inferior tribunal, board, or officer exercising judicial functions has exceeded the jurisdiction conferred, or is acting illegally when in the judgment of the court, there is no plain, speedy or adequate remedy.

APPENDIX B

Petition for Writ of Certiorari and Other Relief

To the Honorables, the Chief Justice and the Associate Justices of the Supreme Court of Tennessee:

Petitioners pray that writ of certiorari issue to review the judgment of the Chancellor, Part 2 of the Chancery Court of Shelby County, assuming jurisdiction of a matter reserved exclusively to the National Labor Relations Board

and entering a temporary injunction and enjoining the petitioners and any members of said union, its agents, servants or employees from further picketing on or about the premises described in the original bill.

Your petitioners would show that they are and were very much aggrieved by the judgment of the Court below because it has exceeded its jurisdiction, "or is acting illegally" and that petitioners have no other plain, speedy or inadequate remedy.

Your petitioners would respectfully show, that despite their plea in abatement to the original bill for injunctive relief because the subject-matter was a matter involving unfair labor practices within the coverage of the National Labor Relations Act, as amended, and therefore within the exclusive jurisdiction of the National Labor Relations Board, the Court below assumed jurisdiction because the picketing violated the so-called Tennessee Right-To-Work Law, TCA 50-208, et seq.

The United States Supreme Court has repeatedly held and ruled that state courts have been pre-empted on jurisdiction of acts and conduct which are "arguably" violations of the National Labor Relations Act, as amended. *San Diego Building Trades Council, etc., v. Garmon et al.*, 359 U.S. 236, and cases cited below.

The United States Supreme Court has reversed this Court on the precise findings of the Court below that its jurisdiction is sustainable by reason of the so-called Tennessee Right-To-Work Law. *Local Union 429 v. Farnsworth and Chambers Company*, 353 U.S. 969, reversing 201 Tenn. ..... 299 S.W.2d 8; *Liner v. Jafco*, ... U.S. ....., reversing Tenn. Court of Appeals, decided January 6, 1964. See also *Local No. 438 Construction and General Laborers Union v. Curry*, 371 U.S. 542, on this precise point.

Petitioners have procured a certified copy of the record and have attached it to this petition as Exhibit "A".

PREMISES CONSIDERED, PETITIONERS PRAY:

1. The transcript of the proceedings in this cause in the Chancery Court, Part 2, Shelby County, certified by the Clerk and Master of said Court to be a full, true and perfect transcript thereof, and this petition for the writ of certiorari and other relief, tendered herewith be, by fiat, ordered filed with and by the Clerk of the Supreme Court.

2. That this case be placed upon the docket of this Court for argument and that the judgment and order of the Chancery Court, Part 2, Shelby County, be reviewed and reversed and that a judgment be rendered herein for petitioners.

3. That the petitioners have such other, further, and general relief to which they may be entitled.

THIS IS THE FIRST APPLICATION FOR A WRIT OF CERTIORARI IN THIS CASE.

/s/ Anthony J. Sabella
Anthony J. Sabella
Attorney for Petitioners

STATE OF TENNESSEE)
)
COUNTY OF SHELBY)

I, Anthony J. Sabella, being duly sworn, make oath that I am Attorney for petitioners; that I am familiar with the facts stated in the foregoing petition and that the same are true, except those stated on information and belief and those I believe to be true; and that further that in my opinion, petitioners are entitled to the relief prayed.

/s/ Anthony J. Sabella

Sworn to and subscribed before me this 19th day of February, 1964.

/s/ R. H. Pearson
Notary Public

My Commission expires: August 29, 1965

Notice of Hearing

To: Al H. Thomas, Esq., Solicitor for Respondents
81 Madison Building
Memphis, Tennessee

Please take notice that I will present the above and foregoing petition to the Supreme Court of Tennessee, or one of the Justices, in Nashville, Tennessee on the 24th day of February, 1964, at 9:30 o'clock A.M., and seek the relief prayed for therein.

CERTIFICATE OF SERVICE

I, Anthony J. Sabella, Attorney for petitioners in this cause, hereby certify that I have served a copy of the above and foregoing petition upon Al H. Thomas, Esq., by delivering a copy of the same to him at his office in the 81 Madison Building, Memphis, Tennessee, this 20th day of February, 1964.

/s/ Anthony J. Sabella
Anthony J. Sabella

Petition denied.

White, J.

March 12, 1964

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1963

No. 951

CARPENTERS LOCAL UNION NO. 345 OF THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, and H. A. KELLUM, PRESIDENT; OTTO SCHLAFER, BUSINESS AGENT,

Petitioners,

vs.

HOWARD RUBIN, d/b/a; HOWARD RUBIN AND COMPANY

Respondents.

REPLY BRIEF TO PETITION FOR A WRIT OF CERTIORARI TO THE CHANCERY COURT OF SHELBY COUNTY, TENNESSEE

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1963

No. 951

CARPENTERS LOCAL UNION NO. 345 OF THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, and H. A. KELLUM, PRESIDENT, OTTO SCHLAFER, BUSINESS AGENT,
Petitioners,

vs.

HOWARD RUBIN, d/b/a, HOWARD RUBIN AND COMPANY
Respondents.

REPLY BRIEF TO PETITION FOR A WRIT OF CERTIORARI TO THE CHANCERY COURT OF SHELBY COUNTY, TENNESSEE

The respondents have been directed by the Court to file a Reply Brief to the Petition for a Writ of Certorari heretofore filed by the petitioners herein, discussing in said Reply Brief the four Supreme Court decisions listed in the citations section of this Brief.

Under the section titled "Opinions Below" appearing on Page 2 of the Petition, the petitioners recite that "the Supreme Court of Tennessee rendered no opinion in its denial of the Writ." At the time the Petition for a Writ of Certiorari was presented to this Court, this statement was correct, but subsequently, on March 30, 1964, a "Memoran-

dum Not For Filing" was forwarded to counsel for petitioners and respondents. (App.A.).

In the petitioners' Statement of the Case, they recite in the second paragraph on Page 4 of said Petition that "The Chancery Court, as is its customary procedure, considered the matter on bill and answer . . . . ." In addition, however, two sworn affidavits were filed on behalf of the respondents (App. B & B 1), which also had to be considered together with the sworn bill and answer, in accordance with the procedures of the Court.

Considering the findings of the Supreme Court of the State of Tennessee set forth in its "Memorandum Not For Filing," *supra*, respondents are of the opinion that petitioners' statement in the final paragraph under the "Statement of the Case" appearing on page 4 of said Petition "Thus there is a final order asserting jurisdiction over a subject matter which is beyond the power of the state court and instead is within the exclusive jursdiction of the National Labor Relations Board" is in error.

The respondents will now discuss the four Supreme Court decisions as requested.

The San Diego Building Trades Council, Millmen's Union, Local 2020 v. Garmon, 359 U.S. 236, 79 S.Ct. 773, 3 L.Ed. 2d 775, case is not applicable to the subject case. In Retail Clerk's International Association, Local 1625, AFL-CIO v. Schermerhorn, —— U.S.——, 84 S.Ct. 219, ——L.Ed2d ——, this Court specifically stated that the Garmon case "did not present the problems posed by §14(b), viz., whether the Congress had precluded state enforcement of select state laws adopted pursuant to its authority."

This Court, in Local No. 438 Construction and General Laborers Union v. Curry, 371 U.S. 542, 83 S.Ct. 531, 9

L.Ed.2d 514, answers in the negative the "Questions Presented" as posed by the petitioners on Page 2 of the Petition. The facts of the Curry case, however, are clearly distinguishable from the facts of the subject case. In the Curry case, it was stipulated that the respondents, Curry, et al, had purchased more than $50,000.00 worth of goods and commodities from outside the State of Georgia, and their purchases therefore met the direct inflow standards set by the NLRB for the exercise of its jurisdiction. In the subject case, the petitioners have not availed themselves of a full hearing of the matter and, therefore, the facts in this regard must be taken from the bill and answer and the affidavits filed on behalf of the respondents. The only averments made by petitioners in their answer are as follows:

> "Defendants would show that the value of the apartment being constructed is in excess of $500,000.00 and that more than $50,000.00 in value of the materials is shipped into the State of Tennessee from points outside the State of Tennessee and therefore the construction of the apartment project directly affects interstate commerce and the labor dispute comes within the exclusive jurisdiction of the National Labor Relations Board."

We are of the opinion that the value of the apartment being constructed has no consideration in determining the jurisdictional standards of the NLRB with respect to the subject case, said $500,000.00 gross volume of business test pertaining only to retail concerns. Further it will be noted that the petitioners did not aver that the $50,000.00 inflow standard had been met at the time of the filing of their answer. There is a question as to whether their averment was to the effect that the inflow standard would be met

at a time subsequent to their answer and as the job progressed. If this were the effect of their averment, however, it would be mere speculation and conjecture on their part, and on the Court's part, if it would follow same. The NLRB has explicitly refused to do so in a very similar case, Oregon Labor-Management Relations Board (Charles Lake Construction Company) 136 NLRB 1207:

> "Our determination herein is based only upon the facts submitted in the petitions. As indicated above, the testimony relating to the Employer's apartment house project had been excluded at the hearing by a ruling of the State Board, although the Union "feels" that such testimony would increase the employer's inflow to more than $50,000.00. However, the Union did not set forth any specific inflow figures relating to that project, so that the extent, if any, of the project's inflow is indefinite and speculative. Under these circumstances, this Board is unable to conclude that the project, which has not proceeded beyond the foundation stages, would have increased the Employer's annual inflow to more than $50,000.00."

The respondents, on the other hand, made sworn affidavit that the NLRB standards could not have possibly been met, inasmuch as $50,000.00 worth of goods and materials had not been purchased in toto from instate and out-of-state sources.

For the same reasons as set out in the Curry case, *supra*, N. L. Liner et.al. v. Jafco, Inc., et.al., ——U.S.——, 84 S.Ct. 391, —— L.Ed.2d ——, is distinguishable from the subject case. In the Jafco case, the proof adduced on a full hearing of the cause was that, before the hearing, Rea Construction Company, Jafco's subcontractor, had purchased outside Tennessee and brought to the site materials

costing $147,099.67. This, of course, more than met the direct inflow standards of $50,000.00 set by the NLRB for the exercise of its jurisdiction.

The Schermerhorn case, *supra*, has no direct applicability to the subject case, in that it involved a contract in esse, whereas in the subject case no contract is involved. However, the Schermerhorn case is helpful for the purpose of this Brief in its affirmation that the Garmon case, *supra*, also has no applicability to the subject case.

CONCLUSION

It is strongly urged that the petitioners have prematurely brought their Petition(s) for a Writ of Certiorari to the Supreme Court of the State of Tennessee and to this Court. If the case is allowed a full hearing on its merits in the Chancery Court, the Chancery Court, and, if necessary, at a later date, this Court, would be in a position to ascertain whether the activities of the respondents affected interstate Commerce within the purview of the NLRB jurisdictional standards. If this were found by the lower Court to be in the affirmative, the injunction would have to be dissolved by the lower Court to conform with the law promulgated in the Curry and Jafco cases. If the proof is to the negative, the injunction would be made permanent and the petitioners would have no legal support for their Petition for a Writ of Certiorari.

Respectfully Submitted,

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81 Madison Building
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81 Madison Building
Memphis, Tennessee

IRVING STRAUCH
81 Madison Building
Memphis, Tennessee
Attorneys For Respondents

THOMAS, SHAINBERG & HALLIBURTON
Of Counsel

APPENDIX A

March 30, 1964

Honorable Anthony J. Sabella, Atty.
Columbian Mutual Towers Building
Memphis, Tennessee

Re: Carpenters Local Union No. 345 of the United Brotherhood of Carpenters and Joiners of America, and H. A. Kellum, President; Otto Schlafer, Business Agent
vs.
Howard Rubin, dba, Howard Rubin and Company

Dear Sir:

Enclosed please find "MEMORANDUM NOT FOR FILING" setting forth reasons why the Court refused to take jurisdiction of the above cause.

Enclosed, also, is Petition for writ of Certiorari and other relief.

Very truly yours,

Ramsey Leathers, Clerk

RL:maf
Enclosures (2)

cc: Honorable Al H. Thomas, Atty.
81 Madison Building
Memphis, Tennessee
Enclosure C

Carpenters Local Union No.
945 of the United Brotherhood
of Carpenters and Joiners of America,
and H. A. Kellum, President, Otto Schlafer,
Business Agent,
Petitioners

v.

Howard Rubin, dba, Howard
Rubin and Company,
Respondents

MEMORANDUM NOT FOR FILING

Based upon averments of fact in a sworn bill and supported by affidavits filed at the hearing, a temporary injunction was issued by the chancellor pursuant to the prayer set out in the original bill, despite the objection of the defendants of lack of jurisdiction as more specifically set out in the Plea in Abatement filed by them.

From the action of the chancellor in granting the temporary injunction on the date shown in his order, the petitioners, defendants below, filed a petition for the writ of certiorari with the member of this Court whose name appears on this memorandum. Upon consideration of said

petition by all of the members of the Court, the writ was denied and some of the reasons for such action are:

1. Under the procedural laws of this State the petitioners have a plain, speedy and adequate remedy at law, and when, in the judgment of the court, this is made to appear, as here, the writ will not lie. T.C.A. 27-801.

2. Certiorari will not be granted by this Court to review a mere interlocutory decree or order, such as a temporary injunction, as here, which the petitioners did not seek to have dissolved prior to filing the petition here where, as here, it is not shown that the petitioners are suffering irreparable injury and where the only relief sought is that of certiorari and where there is, as here, a speedy and adequate remedy at law.

3. Appeals as a matter of right lie only from final decrees under the procedural laws of this State. No appeal will lie from an interlocutory order or ruling granting, dissolving or modifying injunctions which do not constitute the whole relief sought in the proceeding. See Section 1332, Gibson's Suits in Chancery, 5th Ed. As said therein "to allow appeals from every ruling of the chancellor from the beginning of the suit to the final decree would be to absolutely clog the wheels of justice; suits would become interminable; the appellate courts would be overwhelmed by an avalanche of appeals."

4. Finally, and more important here, is the jurisdiction of this Court to entertain this petition. By Chapter 100 of the Public Acts of 1925, there was created in this State an appellate court styled "the Court of Appeals" as now set out in T.C.A. 16-401, et seq. The jurisdiction of that court is set out in Section 16-408 as extending to all civil cases, except those matters specifically excluded in said section.

Appellate jurisdiction of civil cases in Chancery Court in which pleadings presented issues of fact to be determined upon proof to be heard by the court was in the Court of Appeals and not in the Supreme Court. See 206 Tenn. 680, 337 S.W.2d 239, and many other cases to the same effect.

This memorandum is written in response to the respectful request of counsel pursuant to the denial of the writ as endorsed on the original petition on March 12, 1964.

Weldon B. White,
Justice

APPENDIX B

IN THE CHANCERY COURT OF SHELBY COUNTY, TENNESSEE

Howard Rubin, d/b/a
Howard Rubin & Company,

Complainant

vs: No. 66560-2 R.D.

Carpenters Local Union No. 345
Of The United Brotherhood of
Carpenters and Joiners of America,
and H. A. Kellum, President,
Otto Schlafer, Business Agent,

Defendants

AFFIDAVIT

STATE OF TENNESSEE:
COUNTY OF SHELBY:

Your affiant, Howard Rubin, makes oath as follows:

That he sub-contracted all work to be performed under the subject contract with the owner. That in doing so, he let all work out for bids, not restricting same to Union or Non-Union labor. That he accepted the low bids on the various types of work to be performed. That the electrical work was let to a union sub-contractor. That the work not yet contracted for will go to the low bidder, regardless of union or non-union status. That to this date there has not been $50,000.00 worth of materials purchased for the job, from in State or from out of State, and that your affiant will not have purchased $50,000.00 worth of materials from Out of the State at the time the job is completed. As to the amounts of materials purchased from out of State by affiant sub-contractor, your affiant has no knowledge.

Further your deponent sayeth not.

.....
Howard Rubin

Sworn to and subscribed before me this 4th day of February, 1964.

.....
Notary Public

My commission expires:

APPENDIX B1

IN THE CHANCERY COURT OF SHELBY COUNTY, TENNESSEE

Howard Rubin, d/b/a
Howard Rubin & Company,

Complainant

vs. No. 66560-2 R.D.

Carpenters Local Union No. 345
Of The United Brotherhood of
Carpenters and Joiners of America,
and H. A. Kellum, President,
Otto Schlafer, Business Agent,

Defendants

AFFIDAVIT

STATE OF TENNESSEE:
COUNTY OF SHELBY

Your affiant, Al H. Thomas, makes oath as follows:

That as attorney for complainant, Howard Rubin, I contacted Otto Schlafer, one of the above-captioned defendants, by telephone on Wednesday afternoon, January 29, 1964. That in my conversation with Mr. Schlafer, I asked Mr. Schlafer what he was seeking by his picket. Mr. Schlafer replied that he was interested in seeing Mr. Rubin hire carpenters from Local Union # 345. I then inquired of Mr. Schlafer if his carpenters would work with other carpenters who were not members of a Union. Mr. Schlafer's reply was in the negative.

I then inquired of Mr. Schlafer if all of the carpenters on the job were members of his Union, would they be willing to work if other laborers on the job did not belong to a Union of their respective trades. Mr. Schlafer at first replied in the negative and then corrected himself to say that I will have to talk to my attorney about that matter.

There was then further conversation as to the possibility of Mr. Schlafer meeting with Mr. Rubin, which meeting never materialized.

Further your deponent sayeth not.

.....

Al H. Thomas

Sworn to and subscribed before me this 4th day of February, 1964.

.....

Notary Public

My commission expires:

.....